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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,960	12/08/2005	Michael C. Gaidis	FIS920030127US1	6525
32074	7590	06/25/2009	EXAMINER	
INTERNATIONAL BUSINESS MACHINES CORPORATION			GOODWIN, DAVID J	
DEPT. 18G			ART UNIT	PAPER NUMBER
BLDG. 321-482			2818	
2070 ROUTE 52				
HOPEWELL JUNCTION, NY 12533				
NOTIFICATION DATE		DELIVERY MODE		
06/25/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

EFIPLAW@US.IBM.COM

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/559,960	GAIDIS, MICHAEL C.	
	<b>Examiner</b>	<b>Art Unit</b>	
	DAVID GOODWIN	2818	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 March 2009.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7 and 16 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 16 recites the limitation "magnetic tunnel junction strap" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 6, 7, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Iwata (US 6795334).

5. Regarding claim 1.

6. Iwata teaches a semiconductor device comprising a magnetic random access memory device. Said device comprises a lower metallization conductive line (71) in a dielectric layer (fig 101). A lateral metal strap (72) conductively couples to said lower conductive line (71). A magnetic tunnel junction stack (73) on said conductive strap (72). A metal shield (74) formed over said magnetic tunnel junction stack (73), said conductive metal shield (74) being substantially coextensive with said metal strap (72).

An upper conductive line (81) conductively coupled to said metal shield (74) (fig 101) (column 60 line 1-column 62 line 40).

7. Regarding claim 6

8. Iwata teaches that the lower metallization conductive line (71) is formed at a first conductive level of the mram device and the upper conductive line (81) is formed at a second conductive level of the mram device (fig 101).

9. Regarding claim 7.

10. Iwata teaches a wordline (67) formed at a lower conductive level and adjacent said lower conductive line (74), said wordline (67) electrically insulated from said lateral conductive strap (72) and said wordline (67) disposed below said magnetic tunnel junction (73). Wherein said upper conductive line comprises a bitline of an individual mram cell and said cell including said magnetic tunnel junction and said wordline (101).

11. Regarding claim 16.

12. Iwata teaches that the magnetic tunnel junction stack (73) is not coextensive with the metal strap (fig 101).

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwata (US 6795334) as applied to claim 1 and further in view of Tsang (US 6909630).

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3. Regarding claim 2.

4. Iwata teaches elements of the claimed invention above.

5. Iwata does not teach the structure of the magnetic tunnel junction.

6. Tsang teaches the structure of a magnetic tunnel junction. Said junction comprises a non magnetic layer (3102) formed between a lower magnetic layer (3101) and an upper magnetic layer (3103). A metal hard mask layer (3104) formed on said upper magnetic layer (3103). The distance between the upper conductive (32) and the upper magnetic layer (3103) is define by the total thickness of the intervening layer, the metal hard mask (4104) (fig 7) (column 6 lines 10-40).

7. It would have been obvious to one of ordinary skill in the art to form a magnetic tunnel junction comprised of non-magnetic and magnetic layers in order that during writing current will yield magnetic fields that will reorient the free layer and thereby store data.

8. Regarding claim 3.

9. Tsang teaches the thickness of the hardmask (3104) is 300 angstroms.

10. Differences in thickness will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such thicknesses are critical. "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the workable ranges by routine experimentation". *In re Aller*, 220 F.2d 454,456,105 USPQ 233, 235 (CCPA 1955).

Since the applicant has not established the criticality (see next paragraph), and this thickness has been used in similar devices in the art (see, e.g., Tsang) it would have been obvious to one of ordinary skill in the art to use these values in the device.

#### CRITICALITY

The specification contains no disclosure of either the critical nature of the claimed thickness or any unexpected results arising therefrom. Where patentability is said to be based upon particular chosen dimensions or upon another variable recited in a claim, the applicant must show that the chosen dimensions are critical. *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990).

11.  
12. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwata (US 6795334) as applied to claim 1 in view of Kim (US 6806096).

13. Regarding claim 4
14. Iwata teaches elements of the claimed invention above.
15. Iwata does not teach the use of tantalum in the metal layer.
16. Kim teaches a semiconductor MRAM device. Said device comprises a metal capping layer (126) comprising a combination tantalum and tantalum nitride (column 6 lines 1-5).
17. It would have been obvious to one of ordinary skill in the art to make the second metal layer of tantalum nitride in order to increase conductivity and reduce diffusion.
18. Regarding claim 5.
19. Kim teaches a semiconductor MRAM device. Said device comprises a metal capping layer (126) comprising a combination tantalum and tantalum nitride (column 6 lines 1-5).
20. It would have been obvious to one of ordinary skill in the art to make the first metal layer of tantalum nitride in order to increase conductivity and reduce diffusion.

21. A claim to the structure of a device must distinguish from the prior art based upon differences in the structure rather than in differences in how the structure is made (MPEP 2113).

***Conclusion***

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID GOODWIN whose telephone number is (571)272-8451. The examiner can normally be reached on Monday through Friday, 9:00am through 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Loke can be reached on (571)272-1657. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

djg

/STEVEN LOKE/  
Supervisory Patent Examiner, Art Unit 2818